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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/764,718 | 01/18/2001 | Patrick H. Wnek | 5887.00 | 7564 |

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 01/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/764,718

Applicant(s)

WNEK, PATRICK H.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Compton.

Compton discloses a nestable container made at least partially of paperboard (see column 7, line 67 to column 8, line 5), the inner surface of the side wall includes an inwardly projecting bulge (22, 122 or 222) and the outer surface of the side wall includes an outwardly projecting bulge (23', 124 or 223'). The outwardly projecting bulges cooperate with the inwardly projecting bulge of an underlying nested container to encourage aligned nesting of the containers. As shown in Fig. 6 and 7 the inwardly projecting bulge (222) is one of a series of bulges which are provided around the inner circumference of the container's side wall. The series of bulges essentially provide one inwardly projecting ring-like bulge. The structure of the outer bulges essentially provide one outwardly projecting ring-like bulge.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. (Newman) in view of Compton.

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Newman discloses a nestable container with an inwardly projecting ring-like bulge as shoulder (11) and an outwardly projecting ring-like bulge as the combination of ribs (10) and the portion (13) of the side wall that projects outwardly of portion (5) of the side wall, the lower end of ribs (10) cooperate with the shoulder (11) of an underlying nested container to encourage aligned nesting of the containers. Newman discloses the invention except for the container material being at least partially of paperboard. Compton teaches paperboard as a container material. It would have been obvious to modify the material composition to include at least partially paperboard material.

For claim 16, the combination discloses the invention except for the microwave susceptor layer. Microwave susceptor layers are well known. It would have been obvious to add a microwave susceptor layer in order to cook the food contents of the container.

Claims 1-8, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petitto in view of Compton.

Petitto discloses the invention except for the container material being at least partially of paperboard. Compton teaches paperboard as a container material. It would have been obvious to modify the material composition to include at least partially paperboard material.

For claim 16, the combination discloses the invention except for the microwave susceptor layer. Microwave susceptor layers are well known. It would have been obvious to add a microwave susceptor layer in order to cook the food contents of the container.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Compton in view of Sorensen.

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Compton discloses the invention except for the outwardly projecting bulge being horizontally aligned with the inwardly projecting bulge. Sorensen teaches a nestable container with an outwardly projecting ring-like bulge defined by ledge (18) and ribs (30) which project outwardly from lower wall section (24) and an inwardly projecting ring-like bulge defined by ledge (18) and ribs (28) projecting inwardly from upper wall section (20). It would have been obvious to modify the bulge/rib construction of Compton to have Sorensen's arrangement in order to align the bulges so that the amount of not overlapped or not nested space is minimized to compactly nest the containers and nest more containers in less space.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Compton.

Compton discloses the invention except for the microwave susceptor layer. Microwave susceptor layers are well known. It would have been obvious to add a microwave susceptor layer in order to cook the food contents of the container.

Applicant's arguments with respect to claims 1-12 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37


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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9302. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner

Any inquiry concerning this communication of earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703) 308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

January 17, 2002